

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO: 5:10-CR-00157-BR

UNITED STATES OF AMERICA

v.

MOISES AVILA-GARCIA

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ORDER

This matter is before the court on defendant's letter dated 28 March 2012. In that letter, defendant requests that the court send a copy of his case file without cost. He states that he needs the file to file a motion pursuant to 28 U.S.C. § 2255.

Without a pending habeas corpus petition, defendant cannot be provided any transcripts at government expense. See 28 U.S.C. § 753(f) ("Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal."); United States v. Horvath, 157 F.3d 131, 132 (2d Cir. 1998) ("Based on the plain language and necessary operation of the statute, we conclude that a motion for a free transcript pursuant to § 753(f) is not ripe until a [28 U.S.C.] § 2255 motion has been filed."). Furthermore, to obtain free copies of documents within his case file, defendant must make a showing of particularized need. See United States v. Rast, No. 6:02-cr-00948-GRA, 2007 WL 3377200, *1 (D.S.C. Nov. 7, 2007) ("It is well-settled in this circuit that a prisoner who requests free copies of records in his or her criminal case must show a

particularized need for such records.” (citation omitted)). Defendant does not need copies of all documents in the case to enable him to prepare a habeas corpus motion, as that filing requires relatively basic information of which he should have first hand knowledge. See Rule 2(b), Rules Governing Section 2255 Proceedings (requirements of habeas corpus motion).

The request is DENIED. The Clerk is DIRECTED to send defendant a copy of the docket sheet from his case file.

This 10 April 2012.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is written over a horizontal line.

W. Earl Britt
Senior U.S. District Judge